United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

564

APPENDIX FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

YVONNE H. PARKS,

Appellant

v. No. 22,705

NORMAN E. PARKS,

Appellee

APPEAL FROM A JUDGMENT OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

YVONNE H. PARKS 3149 Robinson Street, Southeast Washington, D. C. Plaintiff v. NORMAN PARKS 612 Keefer Heights, N. W. #3 Washington, D. C. Defendant	:	Civil Action No. D_____

COMPLAINT FOR ABSOLUTE DIVORCE
(One-Year Voluntary Separation)

The Complaint of plaintiff, Yvonne H. Parks, respectfully states:

1. The jurisdiction of this Court is based on Title II, Section 1141 of the District of Columbia Code, 1967 Edition.

2. The plaintiff is an adult citizen of the United States and a resident of the District of Columbia, and has been for more than one year next preceding the filing of the Complaint herein. Since said separation of the parties hereto, plaintiff has resided at: 2245 - 14th Street, Southeast, and 3149 Robinson Street, Southeast, all in the District of Columbia.

3. The defendant, Norman E. Parks, is likewise an adult citizen of the United States and a resident of the District of Columbia and is being sued herein as the lawful husband of the plaintiff. He is now residing at 3319 Holmead Place, Northwest. Other residences of the defendant subsequent to the separation of the parties hereto are unknown.

4. The parties hereto were lawfully married on the 11th day of February, 1961, in Washington, D. C. Of this union no children were born.

5. The parties found themselves having extreme marital difficulties, and so they voluntarily agreed to separate and did so separatedon or about July, 1961, and have lived separate and apart and without cohabitation ever since.

6. There is no possibility of a reconciliation between the parties and there are no property rights to be adjudicated or adjudged between the parties hereto.

WHEREFORE, premises considered, plaintiff prays that she be granted an absolute divorce from the defendant, Norman E. Parks, on the ground of one year voluntary separation.

And for such other and further relief as the Court deems just and proper.

_____
Yvonne H. Parks

_____
David Raycroft
Attorney for Plaintiff
1200 You Street, Southeast
Washington, D. C.
584-8303

DISTRICT OF COLUMBIA, ss:

Yvonne H. Parks, being first duly sworn on oath according to law deposes and says that she has read the foregoing Complaint by her subscribed and knows the contents thereof, that the information contained therein based upon her information and belief she verily believes to be true.

_____

Subscribed and Sworn to before me this _____ day of _____, 1968.

_____
Notary Public, D. C.

My Commission Expires:_____

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

YVONNE H. PARKS 3149 Robinson Street, Southeast Washington, D. C. Plaintiff	:	
v.	:	Civil Action No. D_____
NORMAN E. PARKS 612 Keefer Heights, N. W. #3 Washington, D. C. Defendant	:	

A F F I D A V I T

I, Yvonne H. Parks, having been first duly sworn hereby deposes and states as follows:

1. I am the plaintiff in the above-entitled cause and the wife of the defendant, Norman E. Parks.

2. I am a citizen of the United States.

3. I am unable to afford the costs of bringing this action. I am the mother of five (5) children whom I support on approximately $220.00 per month from the Department of Public Welfare. I have no other source of income. This income is barely adequate - given fixed expenses of rent, $74.00 per month; food, $80.00 per month; telephone bill, $8.75 per month and utilities, $9.00. The remainder of my monthly grant goes

to miscellaneous expenses such as clothing and entertainment for my children. I have no real property, no bank account and no automobile.

David S. Raycroft of 1200 U Street, Southeast, will represent me without fee if I am allowed to proceed without prepayment of costs.

YVONNE H. PARKS

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 1968.

Notary Public, D.C.

My Commission Expires:

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

YVONNE H. PARKS 3149 Robinson Street, Southeast Washington, D. C. Plaintiff v. NORMAN E. PARKS 612 Keefer Heights, N. W. #3 Washington, D. C. Defendant	:	Civil Action No. D_____

MOTION TO PROCEED WITHOUT PREPAYMENT OF COSTS

Comes now the plaintiff, Yvonne H. Parks, by and through her attorney and respectfully moves this Court for permission to Proceed Without Prepayment of Costs and states for her reasons the following:

1. That plaintiff is without the means to afford the costs of this suit as set forth in the attached affidavit.

2. That plaintiff has good and substantial grounds for the relief requested in this action and the ends of justice will be served by allowing her to Proceed Without Prepayment of Costs or attorney fees.

3. That the undersigned will represent the plaintiff in this case without a fee.

David Raycroft
Attorney for Plaintiff
Neighborhood Legal Services
1200 You Street, Southeast
Washington, D. C. 20020
584-8803

DISTRICT OF COLUMBIA COURT OF APPEALS

YVONNE H. PARKS 3149 Robinson Street, S. E. Washington, D. C. Plaintiff	:	Civil Action No. Misc. 16-'68
v.	:	
NORMAN E. PARKS 612 Keefer Heights, N. W. #3 Defendant	:	

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes now the plaintiff, Yvonne H. Parks, by and through counsel, and respectfully moves the Court for leave to proceed on appeal in forma pauperis and states for her reasons the following:

1. That petitioner is without the means to afford the costs of this appeal or to give security for the same, as set forth in the attached affidavit.

2. That petitioner has good and substantial grounds for appeal and the ends of justice will be served in allowing her to present these grounds.

3. The undersigned will represent the petitioner without a fee is she is permitted to proceed in forma pauperis.

DAVID S. RAYCROFT
Attorney for Petitioner
Neighborhood Legal Services Program
1200 You Street, Southeast
Washington, D. C. 20020
584-8803

DISTRICT OF COLUMBIA COURT OF APPEALS

YVONNE H. PARKS 3149 Robinson Street, Southeast Washington, D. C. Plaintiff	
v.	Civil Action No. Misc. 16-'68
NORMAN E. PARKS 612 Keefer Heights, N. W. #3 Washington, D. C. Defendant	

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Yvonne H. Parks, having been first duly sworn, hereby depose and say that I am the plaintiff in the above-entitled cause and in support of my motion to proceed on appeal in forma pauperis state as follows:

1. I am the plaintiff in the above entitled cause and the wife of the defendant, Norman E. Parks.

2. I am a citizen of the United States.

3. I am unable to afford the costs of bringing this appeal or to give security for the same. I am the mother of five (5) children whom I support on approximately $220.00 per month from the Department of Public Welfare. I have no other source of income. This income is barely adequate - given fixed expenses of rent, $74.00 per month; food, $80.00 per month;

telephone bill, $8.75 per month and utilities, $9.00. The remainder of my monthly grant goes to miscellaneous expenses such as clothing and entertainment for my children. I have no real property, no bank account and no automobile.

4. I believe that I have a just claim and that I have good grounds for bringing this appeal.

5. The nature of the appeal briefly stated is as follows:

> Error by the Court of General Sessions, Domestic Relations Branch in denying plaintiff's application to proceed in forma pauperis in plaintiff's suit for absolute divorce.

6. David S. Raycroft of 1200 You Street, Southeast, will represent me without fee if I am allowed to appeal in forma pauperis.

_____
YVONNE H. PARKS

Subscribed and Sworn to Before me this _____ day of _____, 1963.

_____
Notary Public, D. C.

My Commission Expires: _____

DISTRICT OF COLUMBIA
COURT OF APPEALS

YVONNE H. PARKS 3149 Robinson Street, Southeast Washington, D. C. Appellant	:	
v.	:	No. 3988 Original
NORMAN E. PARKS 612 Keefer Heights, Northwest Apt. 3 Washington, D. C. Appellee	:	

MOTION FOR HEARING IN BANC

Appellant respectfully moves the Court to grant a hearing in banc, pursuant to D.C. Code, §11-705(b)(2), on her motion for leave to proceed in forma pauperis which was denied by a division of the Court on December 31, 1968. In support of the motion appellant states the following:

1. On November 7, 1968 appellant filed in the Domestic Relations Branch of the District of Columbia Court of General Sessions a motion to proceed without prepayment of costs in an action for absolute divorce based on one year voluntary separation as provided in D.C. Code, §16-904(a) (1967). An affidavit accompanying the petition stated that appellant

was the mother of five children whose sole support was derived from a Department of Public Welfare grant of approximately $220.00 per month.[1/] The affidavit further alleged that this meager income was not sufficient to provide for the cost of this litigation and supply appellant and her children with the necessities of life.

2. On November 8, 1968, the motion to proceed as a pauper was denied by Domestic Relations Branch Judge Joyce H. Green. Appellant took an appeal from that order and filed in this Court a petition to proceed as a pauper on appeal and accompanying affidavit. On December 31, 1968, a division of this Court denied the petition.

3. The order of December 31, 1968, denying the petition to proceed as a pauper, appears to be in direct conflict with an order of a different division of this Court in Jones v. Jones, 3983 Original, entered on December 12, 1968. In the Jones case, the appellant sought to proceed as a pauper in an action for absolute divorce brought in the Domestic Relations Judge Ryan denied the motion. A petition to proceed as a pauper on appeal was granted by this Court on December 12, 1968.

1/ Since the filing of this affidavit, appellant's assistance grant has been established at $229.00 per month.

In all respects relevant to the question of whether an in forma pauperis petition should be granted, the Jones and instant case are the same. Thus, in Jones the appellant was a public assistance recipient who received her total income from the Department of Public Welfare.[2/] In Jones, appellant sought an absolute divorce on ground of voluntary separation for nine years, a period far exceeding the statutory requirement of one year. In the instant case, a similar lengthy period of voluntary separation of seven years serves as the basis for the action.

The different dispositions made, within nineteen days of each other, by the respective divisons in Jones and the instant case, where the relevant facts were virtually identical, can only lead to confusion and uncertainty for parties and trial judges as to the legal standards for granting in forma pauperis petitions in domestic relations cases. A hearing by this Court in banc would remove this uncertainty and confusion.

For the foregoing reasons, it is respectfully submitted that the motion for a hearing in banc be granted.

David S. Raycroft
Neighborhood Legal Services Program
1200 U Street, S. E.
Washington, D. C. 20020
584-8803

Attorney for Appellant

2/Although the appellant in Jones was the mother of eight children rather than five as in the instant case, she received $325 per month as compared to this appellant's $229.00 per month.

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED Dec. 31, 1968
C. Newell Atkinson
Clerk

No. 3988 Original JANUARY TERM, 1968

YVONNE H. PARKS,
Appellant,

v. Misc. 16-68

NORMAN E. PARKS,
Appellee.

BEFORE: Hood, Chief Judge, Myers and Kelly,
Associate Judges.

O R D E R

On consideration of the motion for leave to proceed in forma pauperis and after review of the original file in the trial court, it appears that the appeal sought to be taken is from the order of the trial court denying leave to proceed in that court in forma pauperis; and the court being of the opinion that the action of the trial court was a matter within its discretion and that there is nothing in the record to justify this court in holding that the trial court abused its discretion, it is

ORDERED that the said motion for leave to proceed in forma pauperis be, and the same is hereby, denied.

BY THE COURT:

December 31, 1968

Andrew M. Hood,
Chief Judge.

Copies to:

Honorable Richard R. Atkinson
Honorable Joseph M. F. Ryan, Jr.
Honorable Joynce H. Green
Judges, D. C. Court of General Sessions.

Clerk, D. C. Court of General Sessions.

David S. Raycroft, Esq.
1200 You St., SE 20020
Attorney for Appellant

Norman E. Parks
3319 Holmead Place.
Appellee, pro se.

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED Jan. 24, 1969

C. Newell Atkinson
Clerk

No. 3988 Original

JANUARY TERM, 1969

YVONNE H. PARKS, Appellant,

v.

Misc. 16-68

NORMAN E. PARKS, Appellee.

BEFORE: Hood, Chief Judge, Kelly, Fickling, Kern and Gallagher, Associate Judges.

O R D E R

Upon consideration of the motion of the appellant for a hearing en banc in the above entitled cause, it is

ORDERED that the motion be, and it hereby is, denied.

BY THE COURT:

January 24, 1969

Andrew M. Hood,
Chief Judge.

Copies to:

Honorable Joyns Hens Green
Judge, D.C. Court of General Sessions.

Honorable Richard R. Atkinson
Judge, D.C. Court of General Sessions

Honorable Joseph M.F. Ryan, Jr.
Judge, D.C. Court of General Sessions

David S. Raycroft, Esq.
1200 U Street, S. E. 20020
Attorney for Appellant.

Norman E. Parks, Appellee Pro Se.
612 Keefer Heights, N. W.

Clerk, D.C. Court of General Sessions.

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

ORDER OF COURT

It is Ordered that the Plaintiff in the above-entitled proceeding be and she hereby is not permitted to bring said proceeding to conclusion without prepayment of fees or costs or security therefor.

November 3, 1968

Joyce Hens Green
Judge

A True Copy
Test:
JOSEPH M. BURTON, CLERK
By Madeline C. Nickell
Deputy Clerk

Dated: _____

Meg. St. Gen
9-19-69
(3)

BRIEF FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

YVONNE H. PARKS, Appellant

v. No. 22705

NORMAN E. PARKS, Appellee

APPEAL FROM A JUDGMENT OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS

DAVID S. RAYCROFT
Neighborhood Legal Services Program
1219 Good Hope Road, S.E.
Washington, D. C. 20020

PATRICIA M. WALD
Neighborhood Legal Services
416 Fifth Street, N.W.
Washington, D. C. 20005

ATTORNEYS FOR APPELLANT

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JURISDICTIONAL STATEMENT

This appeal is taken from a decision of the District of Columbia Court of Appeals denying permission to appeal in forma pauperis from a decision of the Domestic Relations Branch of the District of Columbia Court of General Sessions which refused to allow appellant to file a divorce action in forma pauperis without prepayment of costs. On March 24, 1969, this Court granted Appellant's petition to allow this appeal. The jurisdiction of this Court rests on D.C. Code, §11-321 (1967).

STATEMENT OF THE CASE

Appellant is a District of Columbia resident. On November 7, 1968, she lodged with the Clerk of the Domestic Relations Branch of the Court of General Sessions a complaint for absolute divorce on the ground of "voluntary separation from bed and board for one year without cohabitation . . ." D.C. Code, §16-904(a) (1967). The complaint alleged that Appellant and her husband were married in 1961 and separated the same year because of severe marital difficulties. It further alleged that they have lived separate and apart and without cohabitation since July 7, 1961.

Appellant was unable to afford the costs of the suit and submitted to Domestic Relations Judge Joyce H. Green a motion to

proceed in forma pauperis and accompanying affidavit. In her motion, Appellant stated that she had good and substantial grounds for the relief requested and that the ends of justice would be served by allowing her to proceed without prepayment of costs or appointed counsel's fees.

The accompanying affidavit stated that the sole means of support for herself and her five dependent children was a grant of $220.00 per month from the Department of Public Welfare and that she possessed no savings, real property or automobile.[1/] Appellant further stated that her monthly public assistance grant was barely adequate to meet her monthly expenses and that she could not afford the costs of her suit. Fixed monthly expenses were listed as: rent, $74.00 per month; food, $80 per month; telephone bill, $8.75 per month; and utilities, $9.00 per month. Appellant stated that the remainder of her grant ($48.25) was expended on clothing and recreation for her children and on miscellaneous items.[2/]

1/ Since the filing of that affidavit, Appellant's public assistance has been fixed at $229.00. Appellant's children range in age from three to twelve years of age.

2/ Appellant spends $80.00 a month for $114.00 worth of food stamps. She cannot, however, purchase cleaning materials, paper goods and other household items with food stamps.

On November 8, 1968, Appellant's motion to proceed in forma pauperis was denied without comment by Domestic Relations Judge Green. Appellant appealed this order and a motion to proceed on appeal with an affidavit of poverty identical to the one filed below, was filed in the District of Columbia Court of Appeals on December 5, 1968. By an order dated December 31, 1968, a division of the District of Columbia Court of Appeals denied the petition.

Although technically, the court was only denying the request to proceed on appeal as a pauper, the Court of Appeals' order makes it clear that the Court was disposing of the merits of petitioner's appeal. The order stated that an examination of the record on appeal indicated that:

> ... the action of the trial court was a matter within its discretion and that there is nothing in the record to justify this court in holding that the trial court abused its discretion.

Because of an apparent conflict between panels of the District of Columbia Court of Appeals in the treatment of in forma pauperis appeals in divorce cases,[3/] a motion for a hearing en banc was filed with the District of Columbia Court of Appeals

3/ Another division of the Court of Appeals had granted a petition to proceed on appeal in forma pauperis on December 12, 1968, in Jones v. Jones (DCCA No.983 Original), a case substantially similar to the instant one in that plaintiff, as here, was a public assistance recipient seeking an absolute divorce on grounds of voluntary separation.

on January 10, 1969. This motion was denied on January 24, 1969.

On January 10, 1969, Appellant filed in this Court a motion to proceed in forma pauperis and affidavit in support thereof and lodged with the Clerk of this Court a petition for allowance of appeal.

On February 5, 1969, this Court granted the motion and ordered that the petition be filed. The petition for allowance of appeal was granted on March 24, 1969. That order scheduled this case for argument on the same day and before the same division of the Court as Harris v. Harris, C.A.D.C. No. 22,266.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion in denying Appellant's application to proceed in forma pauperis when she was clearly indigent and met the statutory requirements for a divorce?

2. Does the equal protection of the laws guaranteed by the due process clause of the Fifth Amendment require that indigents be allowed access to the courts in divorce proceedings without the imposition of prohibitive costs?

This case has not previously appeared before this Court except on consideration of a petition to proceed as a pauper on appeal and a petition for allowance of appeal from the District of

Columbia Court of Appeals.

SUMMARY OF ARGUMENT

1. The issue in this case, as in the companion case of Harris v. Harris, C.A.D.C. No. 22,266, is whether an indigent woman may obtain a divorce in the Domestic Relations Branch of the District of Columbia Court of General Sessions if she clearly meets the statutory grounds for divorce. The Appellant's application to proceed in forma pauperis in this case was denied without opinion, although she was on welfare, had five children to support and had been voluntarily separated from her husband for seven years. The trial judge in the companion Harris case articulated the reasons for his denial of a similar application as based upon the petitioner's lack of any right to a divorce at public expense and his intention to deny all such applications except in "horrible situations". See Appendix for Appellant, Harris v. Harris, C.A.D.C. No. 22,266, App. 12. Appellant's case is clearly an example of this policy in effect.

Appellant's arguments that such a policy is illegal parallel those made in greater detail by the Appellant in the Harris case. The legislative history of the in forma pauperis law applicable to General Sessions Court, D.C. Code §15-712, shows

no intent to exempt from its coverage any class of legal actions. It was rather intended to afford widescale relief to poor persons in the local courts paralleling that already available in the United States District Court under 21 U.S.C. §1915. Until 1956 divorce applicants in the District of Columbia had their cases heard in the District Court and forma pauperis applications were granted in divorce cases in that court. There is no authorization in the forma pauperis law for General Sessions judges to decide that the courts will not be open to poor persons for an entire class of actions such as divorce. Had Congress intended such an exemption, they would have said so.

2. Appellant's financial situation is even more extreme than that of the Appellant in the Harris case. There can be little question that a mother of five whose only source of income is a welfare allotment meets the indigency test of Adkins v. DuPont Co., 335 U.S. 331 (1948), i.e., that she cannot pay the costs of the proceeding and still provide herself and her dependents with the necessities of life. The costs of her divorce proceeding would be a minimum prepayment to the clerk of $110.00 before she could proceed. If the Appellant does not meet the standards of indigency under D.C. Code §15-712, it is difficult to conceive of any person who would.

3. To the extent that the Domestic Relations Branch judges administer the in forma pauperis law to deny relief to poor divorce applicants, they are denying basic constitutional rights of liberty and access to the courts in contravention of the equal protection of the laws guarantee of the Fifth Amendment. The state requires judicial action to dissolve a marriage and it may not make such action inaccessible to a large portion of its citizens on financial grounds alone. Fundamental rights to marry, to procreate the legitimacy of offspring, and access to innumerable other social and economic benefits under the law result from divorce adjudication. Such rights and benefits cannot constitutionally be conditioned solely on the divorce applicant's ability to pay. Alternative means are available to the court to satisfy statutory requirements for appointed counsel under D.C. Code 16-918 that do not deny relief altogether to indigent plaintiffs.

ARGUMENT

I. The In Forma Pauperis Statute Applicable to General Sessions Court May Not Be Construed To Deny Divorces to Applicants on Grounds Other Than Lack of Indigency or Frivolity.

Appellant, who clearly met the test of indigency and whose petition stated a meritorious claim for divorce under the one-year voluntary separation clause of D.C. Code §16-904(a), was denied, without opinion, permission to proceed in forma pauperis Her case is one in a series of such denials under a policy enunciated by the Senior Judge of the Domestic Relations Branch in opinions filed in Harris v. Harris, Misc. No. 4-68, June 28, 1968; Stevenson v. Stevenson, Misc. No. 12-68, Oct. 31, Sept. 24, 1968 Jones v. Jones, Misc. No. 15-68, Oct. 31, 1968 (reprinted in Brief and Appendix of Appellant, Harris v. Harris, C.A. No. 22,266).[1/] Since July 1968, through March 1969, a docket survey shows that there have been only six motions granted out of twenty-two petitions to proceed in forma pauperis in divorce cases. The fact that two of the motions granted involved divorce applicants with a higher monthly income and fewer dependants than

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1/ The policy apparently applies even where cruelty is the ground for divorce. Carter v. Carter, Misc. No. 41-69, March 18, 1969. Cf. D.C. Citizens' Information Service, Final Report (1968), p.46:

> In contrast to the readily available procedure for dealing with property disputes there are no institutions with the power and responsibility to alleviate domestic violence....Even the 'final solution' to domestic problems, i.e., divorce, is not available to the poor....

Mrs. Parks illustrates the inconsistency which currently characterizes rulings by the Domestic Relations Branch in forma pauperis petitions. 2/

The in forma pauperis law in General Sessions Court, D.C. Code §15-712, was never meant to produce such a result. At the time of its enactment in 1921, divorces were still under the United States District Court for the District of Columbia. Hence they fell within the ambit of the federal forma pauperis statute, 28 U.S.C. §1915, which was interpreted liberally to allow poor applicants who could not pay to obtain divorces. 3/

2/ The record check also showed that of these five cases (Misc. No. 14-68; No. 23-68; No. 1-69; No. 3-69; No. 12-69), four petitions were granted by one judge and two by a second judge. The petitions granted by the first judge included a case of a mother with three children, whose income was $212.00 a month (Smith v. Smith, Misc. No. 14-68); a mother with two children, whose income was $296.00 a month (Coley v. Coley, Misc. No. 3-69); a mother of four children whose income was $223.00 a month (Roberts v. Roberts, Misc. No. 1-69); a mother of five children whose income was $225.00 a month plus irregular support payments. (Davis v. Davis, Misc. No. 12-69). All alleged the grounds of voluntary separation and/or desertion; the second judge granted one petition based on extreme cruelty (Washington v. Washington, Misc. No. 46-69) to a welfare mother with four children and the file on the other case could not be located (Jones v. Jones, Misc. 23-68). Of the seventeen petitions denied, at least seven involved welfare recipients.

3/ A check of the District Court Docket for 1955, the year prior to the transfer of divorce jurisdiction from that Court, showed 19 forma pauperis petitions granted for absolute divorces, the majority for desertion. Hartman v. Hartman, #3473-55; Ritter v. Ritter, #3532-55; McGuire v. McGuire, #3580-55; Stevens v. Stevens, # 4249-55; Tascoe v. Tascoe, #4310-55; Devore v. Devore, #5581-55; Irby v. Irby, #5583-55; Massey v. Massey, #5627-55; Hill v. Hill, # 5673-55; Mayo v. Mayo, #5582-55; Ores v. Ores, #5626-55; Jackson v. Jackson, #346-55; Day v. Day, #523-55; Watkins v. Watkins, #537-55; Burkhart v. Burkhart, #795-55; Harris v. Harris, #635-55; Winston v. Winston, #1492-55.

When Congress transferred divorce jurisdiction to General Sessions Court in 1956, it gave no indication that it in any way meant to restrict the prevailing right of poor persons to their legal remedies of divorce. Indeed by law, the Rules of the "Domestic Relations Branch of the Court of General Sessions may not abridge, enlarge or modify the substantive rights of a litigant." D.C. Code, §13-101(d) (1967).

Although the wording of §15-712, like that of 28 U.S.C. §1915, is permissive on the granting of forma pauperis petitions, the law is clear that such discretion may be exercised only on legitimate grounds such as non-indigency or frivolity of the claim.[4/] It may not be exercised on the personal value judgment of the judge as to whether the petitioner is worthy or whether as a matter of social policy or morals he should be seeking a certain kind of relief at all. Such decisions are for the legislature not the judiciary. The in forma pauperis law may not be made a vehicle for second guessing the legislature and imposing a dual system of family law on the rich and poor in the District.

4/ It is settled that in forma pauperis petitions may not be denied on the ground of lack of substantive merit unless the plaintiff's case is patently frivolous: Coppedge v. United States, 369 U.S. 438 (1962); Eskridge v. Washington State, 357 U.S. 214 (1955); Lane v. Brown, 372 U.S. 477 (1963); John v. Gibson, 270 F.2d 36 (C.A.9, 1959); Ragan v. Cox, 305 F.2d 58 (C.A. 10, 1962); Perkins v. Cingliano, 296 F.2d 567 (C.A. 4, 1961). As indicated, infra, there is surely no basis for concluding that appellant's case is frivolous.

In fact, the prevailing view of sociologists and family experts is that divorce should be more, not less, accessible to the poor. The welfare rolls are filled with women whose husbands have left them without support and usually with children. They cannot remarry because of the legal impediment of their prior marriage. They are encouraged to drift in and out of casual relationships, since the legal security of marriage is indefinitely denied them. Offsprings of such temporary unions must bear the stigma of illegitimacy, and even where the new relationships themselves are stable and the parties desire the trappings of respectability, they are powerless to legitimize their union. Not only are such subsequent unions violative of traditional social norms, but the parents and their children are denied access to public housing and other family oriented social programs.[5/] In 1960, a Study of Aid to Families with Dependent Children (AFDC) in Cook County, Illinois showed:[6/]

5/ See, e.g., Complaint in Higgs v. Washington, Civil Action No. 822-69, United States District Court (1969) (couple with seven children living together for thirteen years, denied admission to D.C. Public Housing because they could not marry due to cost of divorce from wife's prior husband).

6/ Cited in The Negro Family: The Case for National Action (U.S. Dept. Labor, 1965). Cf. the removal of 35 mothers from the welfare rolls on remarriage Sen. Hearings on D.C. Approp., H.R. 8569, 90th Cong., 1st Sess. , p. 2387 (1967).

> "...The 'typical' AFDC mother in Cook County was married and had children by her husband who deserted, his whereabouts are unknown, and he does not contribute to the support of his children. She is not free to remarry and has had an illegitimate child since her husband left."

In 1968, the situation in the District was no different. Twenty percent of AFDC mothers were not free to remarry; 42.4% of AFDC children were illegitimate.[7/] One of the country's foremost family law experts explodes the myth that making divorce financially inaccessible to the poor increases the stability of their relationships.

> "...It may be argued that economic compulsion to remain married and the expense of divorce serve the socially desirable purpose of promoting family stability. In our society, however, such rarely is the case. In real life, the parties become estranged, and when able to do so form new informal family relationships. Poverty usually promotes extra-legal action rather than a resignation to an endurance of an intolerable situation. The poor resort to desertion and propogate illegitimate children in large measure because the law has priced itself out of the market. The law itself is not discriminatory, but in operation it produces discrimination because historically the indigent cannot afford the luxury of formal justice." Foster and Freed , Unequal Protection: Poverty and Family Law, 42 Ind. J 192.

7/ Senate Hearings, District of Columbia Appropriations, H.R. 8569, 90th Cong., 1st Sess., FY 1968, p. 1594; H.R. 18706, FY 1969, pp. 882-3, 896 (1968).

In any case, the forma pauperis law is not and should not be the vehicle for making such decisions on social policy.[8/] A judge's personal feelings on divorce cannot be the final arbiter of a poor person's marital future if he meets the statutory requirements for a divorce. The substantive divorce law in the District gives no such discretion to judges in the marital affairs of the paying petitioner; the forma pauperis law should not do so in the marital affairs of the poor. Discretion based on this kind of individual philosophy converts a court of law into a social dictatorship.

Forma pauperis laws can only be administered fairly if judges' discretion is based upon objective and relevant factors such as the applicant's financial status and the merit or lack of merit in his legal claim. Under either test, this Appellant's application should not have been denied.

8/ The Department of Health, Education and Welfare has recently recognized the public assistance recipient's need for divorce by authorizing a federal reinbursement program for welfare departments who finance clients' divorces. The District of Columbia, however, has no such program. State Letter No. 1053, Department of Health, Education and Welfare, November 8, 1968.

II. Appellant's In Forma Pauperis Petition Met the Requirements of Indigency and A Claim of Substantial Merit and Its Denial Was Therefore Clearly An Abuse of Discretion.

Appellant's affidavit submitted with her original petition to proceed in forma pauperis showed that she received $220 a month for herself and five children. This welfare allotment was her sole source of income and she had no automobile, bank account or other assets. She paid $76 rent; $80 food bills; $17.75 utilities and phone bill. The remaining amount, $46.25 a month, must clothe and transport six bodies and sustain six spirits.

The Director of the Department of Public Welfare for the District of Columbia has testified in Congress.

> Mr. Dade: Do we have, Miss Thompson, people in the District of Columbia who are hungry, unable to get adequate food and sustenance?
>
> Miss Thompson: I do not believe, Mr. Dade, you could say there are people who are without adequate sustenance. I do think you can say there are people who live on a minimum income and even in our welfare grants we know that because of the high rents it is necessary for some families to take money from their food budget in order to pay for rent. And unless they use food stamps, it does mean they have a very tight food budget. There are other families who do not have that much.
>
> Mr. Mc Dade: Less than adequate?
>
> Miss Thompson: Without food stamps, I would say yes, less than adequate. If they used food stamps, it is an adequate budget.

District of Columbia Appropriations for 1969, Hearings Before a Subcommittee of the Committee on Appropriations House of Representatives, 90th Cong., 2d Sess., p. 1036 (1968).9/

Bureau of Labor Statistics figures show that in 1968, an annual income of $5,154 is needed to maintain a family of four in its most basic needs on a low budget level.10/ And Washington

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9/ See also, Appeal Hearing Summary of Findings, Carrier L. Guest, C 29-589.0, Sept. 6, 1968, Dept. Public Welfare, Public Assistance Division. The Hearing Examiner in that case made the following finding of fact, subsequently adopted by the Director:

> "After evaluating all of the evidence and weighing the credibility of all of the witnesses, the Hearing Officer is of the opinion that the evidence has established that the public assistance budget standards for the District of Columbia are not adequate to meet the cost of living for Claimant's family and the families of others similarly situated.
>
> Claimant established by the expert testimony of a nutritionist that even if she were to utilize the low-cost food plan and participated in the food stamp program, she, et al., in all probability would not be able to provide an adequate (nutrient) diet for their family...
>
> Claimant further established that although the District of Columbia pays 100% of its standard, its budget standard estimate nevertheless statistically, appears to be lower than any other state or territory in the United States except Arkansas, North Carolina, Puerto Rico and the Virgin Islands."

The Claimant was a welfare mother of five children like Appellant.

10/ U.S. Department of Labor Release, March 17, 1969, USDL-10-296, p. 11.

consumer prices are higher than the average urban area in virtually all essential categories, such as food, apparel, shoes, transportation.[11/] Mrs. Parks' annual income for a family of six was $2640.

It is almost inconceivable to think that her petition could have been denied for lack of indigency. Welfare allowances represent the minimum (or less than the minimum) amount that society feels will sustain the recipients in their most basic needs--food, shelter, and clothing. To adjust the level of income for an in forma pauperis law below this minimum would be in clear conflict with the standards laid down by the Supreme Court in Adkins v. Dupont Co, 335 U.S. 331 (1948):

> We think an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs...and still be able to provide himself and dependents 'with the necessitities of life'." 335 U.S. at 339.

In fact, the Supreme Court's standards in the Adkins case obviously contemplated application at a level above public welfare.

> "We cannot agree with the court below that one must be absolutely destitute to enjoy the benefit of the statute....To say that no persons are entitled to the statute's benefits until they have sworn to contribute to payment of costs, the last dollar they have or can get, and thus make themselves and their dependents wholly destitute, would be to construe the statute in a way that would throw its beneficiaries into the category of public charges...." 335 U.S. at 339.

11/ Washington Post, March 25, 1969, p. A-1.

It is moreover the intent of Congress that the same standards should govern the forma pauperis provisions in both the United States District Court and the Court of General Sessions. 59 Cong. Rec. 1639 (1920).

Indeed the Arizona Court of Appeals in reversing the denial of a forma pauperis petition for divorce in a case where the facts were identical to this one, i.e., a welfare mother of five children with an income of $220 a month, said:

> "No challenge is posed to the petitioner's eligibility for in forma pauperis status. It is apparent from the record before us that the trial court found 'good cause' to exist for extending indefinitely the payment of fees."

Sloatman v. Gibbons, Arizona Court of Appeals, No. 2 CA-CIV 613, Dec. 10, 1968.

Moreover, had the judge wished further information about Appellant's means, he could have so requested. This is the preferred practice rather than outright denial in doubtful in forma pauperis cases.

> "(W)here the affidavits are written in the language of the statute it would seem that they should ordinarily be accepted, for trial purposes, particularly where unquestioned and where the judge does not perceive a flagrant misrepresentation." 335 U.S. at 339.

See also Gift Stars v. Alexander, 245 F. Supp: 697 (S.D.N.Y 1965); Martin v. Gulf States Itilities, 221 F. Supp. 757 (W.D.La. 1963).

The Adkins case also pointed out that in determining an applicants eligibility for forma pauperis relief, account must be taken of the costs of the proceeding. Here those costs were not limited to the initial $10 filing fee but included as well the $100 that must be deposited with the clerk's office as a sine qua non of proceeding in the action where the defendant does not wish to contest the divorce. This $100 is to compensate the defendant's appointed counsel under D.C. Code §16-918 and its advance has been made a prerequisite for appointment by rule of the court. Rule 5(a), Domestic Relations Branch Rules, Washington Law Reporter, November 29, 1968, p. 1953. Without advance of that sum, no applicant can secure a divorce. Indeed the Senior Judge of the Branch recognized the critical nature of this fee in his opinion in Jones v. Jones, supra, and cited that fee as a reason for denial of the initial forma pauperis application. Since the issuance of amended Rule 5(a) in November 1968, no petition to our knowledge asking for waiver of prepayment of that fee or appointment of an attorney to serve under D.C. Code, § 16-918 without cost has been granted in the Domestic Relations Branch . There appears at present to be no way to obtain a divorce without a $100 prepayment of opposing counsel's fees.

Under the circumstances there is no feasible way in which this Appellant could have saved $110 out of her welfare allowance without depriving her children of food, shelter, and clothing. It defies imagination to understand how she could not be held to qualify as one who is unable to pay the costs of the proceeding under the forma pauperis law.

The merit of her claim to divorce relief is equally clear-cut. The divorce law requires one year of voluntary separation: she had been separated from her husband since 1961. Her petition alleged that this separation was a voluntary one and there was nothing to contradict such an allegation.

Assuming then, as we must, her lack of means and the prima facie merit of her claim for divorce, Appellant's petition must have been denied as part of a systematic or at least selective policy against allowing forma pauperis divorce applications on grounds other than non-indigency or frivolity. This Court must decide if that policy--whatever its basis and however it may be applied by different judges--can be sustained under the laws of the District of Columbia or the Constitution of the United States.

III. A STATUTORY SCHEME WHICH IMPOSES SUBSTANTIAL COSTS TO DENY POOR PERSONS THE REMEDY OF DIVORCE VIOLATES THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FIFTH AMENDMENT.

The constitutional arguments against denial of divorce to poor persons are elaborated in detail in Point III of Appellant's Brief in the companion case, Harris v. Harris (No. 22,266). They apply equally to Mrs. Parks, the Appellant in this case. As a result, Appellant here will discuss only briefly the main facets of that constitutional claim of invalidity under the equal protection of the laws guarantee of the Fifth Amendment, as they affect her case.

A. The rights to marry and to divorce are the most basic ones in life, going to the very core of personal relationships. They are not lightly to be restricted. A woman denied divorce must continue to bear her husband's name; to be legally known to the world as his wife regardless of the manner in which he has discharged his marital obligations. She is not free to remarry; to gain a new husband or a new father for her children, one who will give them his name, his love and companionship, and his support. She has no foreseeable future in a normal socially-approved relationship with a man. Her children

must bear the psychological scars of a one-parent family. Whatever liaison she seeks out must be either a casual one or one condemned in the eyes of the law. She cannot bear any future children who are legitimate in the eyes of the law or the world. She can even be subjected to fine or imprisonment for adultery, while an unmarried woman in the same situation cannot. D.C. Code §22-301.

In recent years the Supreme Court has increasingly concerned itself with these most personal rights to insure their freedom from unjustified State intervention:

> The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men ....The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State. Loving v. Virginia, 388 U.S. 1, 12(1967).

Again in Griswold v. Connecticut, 381 U.S. 479, 485-86 (1965) the Court said, in invalidating a law regulating the use of contraceptives:

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees.... We deal with a right of privacy older than the Bill of Rights -- older than our political

> parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred.

Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) said about procreation:

> We are dealing here with legislation which involves one of the basic civil rights of men. Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches .... He is forever deprived of a basic liberty.

B. Although the right to dissolve an unhappy or bankrupt marriage may not be an absolute one, it is one whose conferral by the state must conform to standards of "reasonableness"[12/]. The State may not grant the right to some and deny it to others for any reasons except those that promote legitimate

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27/ It goes without saying that the equal protection principle applies to legislation conferring advantages and opportunities as well as that regulating the exercise of rights. Assuming, arguendo, that the trial judge was correct in Harris that there is no "vested right" to obtain a divorce, that label in no way affects the application of constitutional guarantees. It is settled that laws which discriminate in relation to privileges are as unconstitutional as those which discriminate in relation to rights. See Sherbert v. Verner, 374 U.S. 398 (1963); Keyishian v. Board of Regents, 385 U.S. 589 (1967); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385 U.S. 511 (1967).

government objectives. Carrington v. Rash 380 U.S. 89, 93 (1965); Bolling v. Sharpe, 347 U.S. 497 (1954); no such legitimate objective is served where divorce is allowed the rich and denied to the poor; money like race, sex, and color are "constitutionally an irrelevance" where fundamental liberties are concerned. Edwards v. California, 314 U.S. 160, 185 (1941) (Jackson, J, concurring).

By making marriages dissoluble only through judicial action, the State has made ready access to its courts for divorce all the more imperative. There is no alternative "agreement"; "compromise" "arbitration" or informal settlement mechanism open to the divorce applicant for relief as there is in other types of litigation. Without a judicial decree, she will remain married unto the end of her days. The New York Supreme Court recognized this vital point in Jeffries v. Jeffries (N.Y.L.J. Dec. 9, 1968, p. 16) when it insisted that poor plaintiffs be provided with money for publication costs in a divorce action.

> ...[A]n action for divorce is fundamentally different from actions in contract or concerning property. The latter may be brought or not brought; they may be settled out of court. But our State Constitution (Art. I, sec. 9) mandates that divorces may be granted only by "due judicial proceedings." Furthermore state statutes dictate who may marry; by whom the marriage

may be performed; the obligations of the parties during marriage; the grounds for separation or divorce and the obligations of the parties after the termination of the marriage. For all purposes the State is very much a "partner" to a marriage and a "party' in a matrimonial action (see Foster and Freed "Marriage: A Basic Civil Right of Man." Ford. L. Rev., October 1968.) .... The loss of access to the courts in an action for divorce is a right of substantial magnitude when only through the courts may redress or relief be obtained....

* * *

"Marriage is clearly marked with the public interest. In this state, a marriage cannot be dissolved except by 'due judicial proceedings'....We have erected by statute a money hurdle to such dissolution by requiring in many circumstances the service of a summons by publication....This hurdle is an effective barrier to Mrs. Jeffries' [sic] access to the courts. The loss of access to the courts in an action for divorce is a right of substantial magnitude when only through the courts may redress or relief be obtained. Such a right is, it seems to me, as basic as Griffin's right to appeal and Mrs. Harper's right to vote. It is manifestly discriminatory under Griffin standards to deprive Mrs. Jeffreys [sic] of the right while affording it to others with money.

I hold that she has been denied the equal protection of the laws guaranteed to her by the state and federal Constitution."

The Supreme Court has moreover held on innumerable occasions that the courts cannot be closed to certain types of litigants or their free access thereto inhibited by special costs where fundamental rights are concerned.

In Truax v. Corrigan, 257 U.S. 312 (1921), a case involving a state law which withheld equitable remedies in

Labor disputes from employers who were suing ex-employees, the Supreme Court declared unequivocally that the equal protection clause insured equal access to the courts by civil litigants:

> "... It is beside the point to say that plaintiffs had no vested right in equity relief, and that taking it away does not deprive them of due process of law. If, as is asserted, the granting of equitable remedies falls within police power, and is a matter which the legislature may vary as its judgment and discretion shall dictate, this does not meet the objection under the equality clause which forbids the granting of equitable relief to one man and the denying it to another under like circumstances and in the same territorial jurisdiction ....[E]qual protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that persons should be equally entitled to pursue their happiness and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, [and] the prevention and redress of wrongs...." [Emphasis the Court's] 257 U.S. at 334.

See also Griffin v. Illinois, 35 U.S. 12 (1956); Douglas v. California, 372 U.S. 353 (1963) and other cases cited in Brief for Appellant, Harris v. Harris.[13/]

The only suggested justification for refusing to grant divorces to poor persons on the same grounds as to

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13/ There are also several recent state court decisions resulting in forma pauperis divorces. Sloatman v. Gibbons, supra: Robertson v. Greene, No. 336-565 (Cir. Ct., Multonomah, Oregon, 1968).

wealthy persons is that the costs involved must ultimately be borne by the courts or the State. But in this case there are readily available solutions which will substantially reduce these costs, at least as far as appointed attorney's fees are concerned. The statute, D.C. Code §16-918, while requiring the appointment of counsel in an uncontested case permits the judge to determine what compensation is proper and who should bear the costs. The court could thus maintain a panel of volunteer lawyers ready to make the required appearance on behalf of defendants who have no desire to contest the divorce. It is the court's own rule which has imposed the $100.00 barrier to a poor person's divorce, and the court has the power to do away with that barrier at any time. In fact, when divorces were in the U.S. District Court, counsel was appointed in forma pauperis cases without any prepayment of fee. If the plaintiff could not afford to pay him or his fee was ultimately not recoverable through the taxation of costs, he accepted the appointment as charity. 14/

14/ In the unlikely event that such volunteer lawyers could not be found, the law itself might need to be repealed. Dating back to 1910, it is one of only a very few such laws in the United States. Vol. 2A, Nelson, Divorce and Annulment (Rev. ed. 1961) 23.12. Other jurisdictions rely on requirements of collaboration of the plaintiff's case. See D.C. Code, §16-919.

Other jurisdictions also appear to appoint counsel when they think it necessary to the State's interest against collusive divorces or when the defendant is without funds to supply his own without assessing the plaintiff in advance. See Bloeth v. Bloeth, (N.Y. Sup. Ct. 1968) 159 N.Y.L.J. No. 114, p. 19; Kelly v. Kelly (Pa. Ct. of Common Pleas, Huntington Co., No. 27, 1968); McLean v. Grabowski, 92 N.J. Super. 545; 224 A.2d 157 (1966).

There is thus no overriding economic concern which dictates that poor persons may not obtain divorces in forma pauperis on the same grounds as other applicants. It remains for this Court in its supervisory capacity over the administration of justice, civil and criminal, in the courts of the District of Columbia to insure that civil justice is no longer denied poor divorce applicants in violation of their constitutional rights to equal protection of the laws. Tate v. United States, 359 F.2d 245, 124 U.S. App. D.C. 28 (1966).

CONCLUSION

For the foregoing reasons, this Court should reverse the order of the District of Columbia Court of Appeals and

order that appellant be allowed to prosecute her application for a divorce without prepayment of filing fees and appointed counsel fees for the defendant.

Respectfully submitted,

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Attorneys For Appellant

April, 1969

A P P E N D I X

STATUTES AND RULES INVOLVED

D.C. Code Section 15-712 (1967)

When satisfactory evidence is presented to the District of Columbia Court of General Sessions or one of the judges thereof that the plaintiff in a suit is indigent and unable to make deposit of costs, the court or judge may permit the prosecution of the suit without the prepayment or deposit of costs.

D.C. Code Section 16-918 (1967)

In all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause. The attorney shall receive such compensation for his services as the court determines to be proper, which shall be paid by the parties as the court directs.

28 U.S.C. 1915(a) and (d)

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

* * *

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

D.C. Court of General Sessions Domestic Relations Rules

Rule 5(a) - Assignment of Attorneys in Uncontested Cases

(1) How Assigned. The assignment of an attorney to represent the defendant, as provided by D.C. Code, 1967 Edition, §16-918, shall be made upon application of the plaintiff or plaintiff's attorney by filing a praecipe requesting same, provided, however, that no such application shall be accepted by the Clerk unless it shall be accompanied by a deposit of the minimum fee for the assigned attorney, which shall be held by the Clerk until ordered disbursed by the Court. At the same time, plaintiff or plaintiff's attorney shall file with the Office of the Clerk a copy of the complaint and of any other pleadings filed to initiate the cause of action, which shall be forwarded by the Clerk to the assigned counsel with the notice of the assignment.

(2) Compensation. In all uncontested divorce or annulment cases, and in all other cases where the Court may deem it necessary and proper, a disinterested attorney shall be assigned by the Court to enter his appearance for the defendant and actively to defend the cause. Such attorney shall receive such compensation for his services as the Court may determine to be proper and to be paid as the Court may direct.

A - 3

January 15, 1962

M E M O R A N D U M

TO Mr. John M. Bischoff, Chief Deputy Clerk
Domestic Relations Branch

FROM Associate Judges Burnett, Myers, and Ryan

RE Compensation to Assigned Attorneys in
Uncontested Cases

At the last meeting of the three associate judges of the Domestic Relations Branch, it was decided that effective on and after February 1, 1962, the minimum standard fee to be allowed assigned attorneys in uncontested divorce or annulment cases that go to final trial shall be One hundred dollars ($100.00), due and payable upon the completion of the trial. This shall not preclude the trial judge from awarding a larger fee in the event extended and greater services than average are required of an assigned attorney in any unusual case.

Please post a notice to this effect on the bulletin board so that attorneys may be so advised and forewarned.

For the Court

/s/

Frank H. Myers
Associate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellant, with Appendix, was served by first class mail, postage prepaid, on Walter W. Johnson, attorney appointed as amicus curiae on the side of appellee, 2000 L. Street, N. W., Suite 504, Washington, D. C. 20036 and on the defendant, Norman E. Parks, 612 Keefer Heights, N. W., Washington, D. C. on the _____ day of April, 1969.

DAVID S. RAYCROFT
Attorney for Appellant

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22705

YVONNE H. PARKS,

Petitioner

v.

NORMAN E. PARKS,

Respondent

On Petition for Allowance of Appeal From The
District of Columbia Court of Appeals

BRIEF IN SUPPORT OF THE PETITION FOR ALLOWANCE OF APPEAL

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COUNSEL FOR PETITIONER

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STATUTES

STATEMENT OF QUESTION INVOLVED

Should petitioner, a poor person with a meritorious cause, llowed to proceed in forma pauperis in the District of Columbia t of Appeals in appealing the denial of her motion to proceed pauper by the Domestic Relations Branch of the District of mbia Court of General Sessions?

The District of Columbia Court of Appeals answered this question, Petitioner contends it should be answered, "Yes."

STATEMENT OF CASE

On November 7, 1968, the petitioner filed a motion with the stic Relations Branch of the District of Columbia Court of ral Sessions to proceed in forma pauperis, in an action for lute divorce based on one year voluntary separation. At that , petitioner had been voluntarily separated for seven years. In ffidavit accompanying her motion, petitioner stated that her sole s of support for herself and her five children was a grant of .00 per month from the Department of Public Welfare.[1] Petitioner her stated that this income was "barely adequate" to meet her hly expenses and that she could not afford to pay the costs of her .

On November 8, 1968, petitioner's motion to proceed in forma eris was denied without comment, by Domestic Relations Branch e Joyce H. Green. Petitioner appealed this order and a motion to eed as a pauper on appeal with an affidavit of poverty identical to

[1] Since the filing of that affidavit, petitioner's public assistance t has been fixed at $229.00.

one filed below, was filed in the District of Columbia Court of als on December 5, 1968. On December 31, 1968, a division of the rict of Columbia Court of Appeals denied the petition.

Although technically, the Court was only denying the request to eed on appeal as a pauper, the Court of Appeals order makes it r that the Court was disposing of the merits of petitioner's appeal. order stated that an examination of the record on appeal indicated :

> ..."the action of the trial court was a matter within its discretion and that there is nothing in the record to justify this court in holding that the trial court abused its discretion."

Because of an apparent conflict between panels of the District of mbia Court of Appeals in the treatment of in forma pauperis appeals ivorce cases, a motion for a hearing en banc was filed with the rict of Columbia Court of Appeals on January 10, 1969. This motion denied on January 24, 1969.

On January 10, 1969, petitioner filed in this Court a motion to eed in forma pauperis and affidavit in support thereof and lodged the Clerk of this Court a petition for allowance of appeal. On February 5, 1969, this Court granted the motion and ordered that petition be filed.

SUMMARY OF ARGUMENT

I. This case presents the question of whether a person seeking vorce may be refused permission to proceed in forma pauperis where is clearly indigent and has a meritorious cause. It is one of many nt cases in which poor persons have been unable to proceed in the

ipal courts of the District of Columbia because of their poverty.

The instant case raises issues identical to those now before this

in Harris v. Harris (No. 22266) and is equally worthy of review.

rris, as in the instant case, the plaintiff sought a divorce based

untary separation. The trial court denied her motion to proceed

rma pauperis and the Court of Appeals refused her motion to proceed

peal as a pauper finding, as in the instant case, that the trial

had not abused its discretion.

Petitioner has exhausted all possibilities of resolving this

ion below. Despite a clear conflict between panels of the Court

peals regarding in forma pauperis appeals in divorce cases, the

denied petitioner's motion for a hearing en banc.

Only this Court can now resolve the question of whether petitioner,

n increasing number of similiarly situated indigent persons, are

barred from the District's municipal courts as a result of their

ty.

II. The District of Columbia Court of Appeals erred in denying

ioner's application to proceed on appeal in forma pauperis, be-

petitioner clearly met the two requirements of indigency and good

which should have entitled her to proceed as a pauper.

To the extent that the Court's ruling may have been based on a

ruction of the in forma pauperis statute that would exclude poor

ce applicants from proceeding as paupers, such a construction would

ve this class of persons of the equal protection of the laws.

In addition, it would be in conflict with Supreme Court decisions ding the right to marry and procreate children and the right of ersons, rich or poor, to have equal access to the courts.

ARGUMENT

I. The Denial of Petitioner's Motion to Proceed on Appeal In Forma Pauperis by the District of Columbia Court of Appeals Presents this Court With Another in a Series of Cases in Which an Indigent Person Has Been Unable to Proceed in the Municipal Courts of the District of Columbia Because of her Poverty.

This is another of the many in forma pauperis cases which have ed this Court in the past several months or are on their way. raise fundamental questions concerning the right of poor persons tain access to the courts and litigate their claims in the same on that the more affluent in our society are able to do every day.[2] ttably, the courts below have shown an unwillingness to come to with the issues. This case presents issues identical to those efore the Court in Harris v. Harris, (No. 222266). In Harris, laintiff sought to proceed as a pauper in an action for absolute ce based on the ground of voluntary separation. In denying the

[2] t should be noted that the financial obstacle petitioner faces ved more than a ten dollar filing fee and a one dollar marshal's D.C. Code §16-918 (1967) requires the assignment of an attorney present the defendant's interest in an uncontested divorce pro- ng. The policy of the Domestic Relations Branch is to require ntiff to pay defendant's attorney fee which is set at a minimum e hundred dollars. In Hart v. Hart (No. 22626 in this Court) f the issues involves the denial by the trial court of petitioner's n to have appointed counsel serve without fee or be compensated by efendant.

to proceed as a pauper the trial court stated that it would exercise its discretion to allow this or similar cases to be t in forma pauperis." Slip opinion at page 3. The District lumbia Court of Appeals denied a motion to proceed as a pauper peal to review that determination. This Court granted a petition llowance of appeal to review that decision.

In the instant case, the basis for the divorce is also for voy separation for, a period of seven years, far in excess of that ed by statute. Petitioner, whose sole income is derived from assistance, is by any conceivable standard a poor person with- meaning of the pauper statute (D. C. Code §15-712 (1967). e her financial condition and the obvious merit of her case, the judge denied her petition to proceed as a pauper. The District lumbia Court of Appeals, although technically denying a motion to that judgment without prepaying costs, took the trouble, as it Harris, to indicate that it had reviewed the record and that, view, the trial court had not abused its discretion in refusing oner permission to proceed as a pauper.

In order to exhaust every avenue of review before seeking redress s Court, petitioner asked the District of Columbia Court of Appeals nt a hearing en banc. This course was indicated by an apparent ict between divisions of that Court. Thus, shortly after one

ion of the court refused to permit an in forma pauperis appeal in arris case, another division of the court granted such a petition nes v. Jones (DCCA 3983 Original), a case in which the plaintiff, re, sought an absolute divorce on grounds of voluntary separation period of years greatly exceeding that required by statute. The iel between Jones and the instant case was greater in that both tiffs are public assistance recipients who receive all their in- from Aid to Families with Dependent Children.

Without explaining the basis for its action, the entire membership e District of Columbia Court of Appeals denied the petition for hg en banc. It is clear from this action that every attempt has made to resolve this issue in the lower courts and that the issue y will not be resolved without the action of this court. It is y necessary to point out that many additional plaintiffs raising dentical question will soon be petitioning this court for review it is clear that there is no disposition by the lower courts to ve the issues.[3]

Petitioner's case, both from the point of view of the substantiality g claim and her lack of funds to prosecute it, is at least as worthy

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n addition to Harris, and the instant case, a petition for allowance peal in this Court has been filed in Hart v. Hart (No. 22626) and d J. Day v. United Securities (No. 22687), both raising identical s, the former in a divorce case and the latter in a consumer case. x v. Cox Misc. No. 29-69, Feb. 12, 1969, and Thomas v. Thomas -69, Feb. 12, 1969, the Domestic Relations Branch has recently de- paupers motions to divorce applicants. In both cases, the plain- were public assistance recipients.

hat of the appellant in Harris. By its action in Harris, this
t has already concluded that such a claim is worthy of review.[4]

II. The District of Columbia Court of Appeals Erred in Denying Petitioner's Motion to Proceed on Appeal in Forma Pauperis.

The standards that control the disposition of an application to
eed in forma pauperis are well settled. An applicant who makes
ima facie showing of indigency must demonstrate good faith by
enting on appeal an issue which is not plainly frivolous,
edge v. U. S. 369 U. S. 438 (1962); Ellis v. U. S. 356 U. S.
(1957).

Although the petitioner in the instant case was proceeding under
District of Columbia In Forma Pauperis Statute (D. C. Code 15-712
7), this Court has made clear in Tate v. U. S. 359 F. 2d 245,
U. S. App. D. C. 261 (1966) that the guiding principles governing
orma pauperis practices in the District of Columbia should be
orm to the extent possible.[5]

Counsel has been advised by the clerk's office that Harris
eady for argument and will probably be placed on the calendar
March. The Court may wish to take no action on the petition
allowance of appeal in the instant case until Harris is decided.

Although Tate was a criminal case, neither the federal In Forma
eris Statute (28 U.S.C. 1915) or D.C. Code §15-712 draw any dis-
tion between criminal and civil cases for the purpose of deter-
ng indigency.

The indigency of petitioner, a public welfare recipient with dependent children, can hardly be questioned. Furthermore, upreme Court has held that one need not be totally destitute er to appeal in forma pauperis, Adkins v. Dupont Co., 335 U. S. 39 (1948) but need only aver that the costs of the appeal can paid without sacrificing the necessities of life. Petitioner ied this requirement in the affidavit accompanying her motion Court of Appeals.

the action of the Court below was based on a construction of ode §15-712, that would exclude suits for divorce based on vo- separation from being brought in forma pauperis, such a con- on cannot stand.[6] Nothing in the text of the statute excludes ticular action from in forma pauperis benefits and there is no tive history or court decisions that give this construction to tute.

rthermore, such a construction would deprive indigent divorce nts of the equal protection of the laws that is guaranteed to s of the District of Columbia through the due process clause ifth Amendment, Bolling v. Sharpe, 347 U. S. 487 (1954); r v. Rusk, 377 U. S., 163 (1964). A construction of §15-712 ld prohibit the indigent from bringing divorce actions in uperis would have the effect of discriminating between di- plicants on the constitutionally irrelevant ground of poverty.

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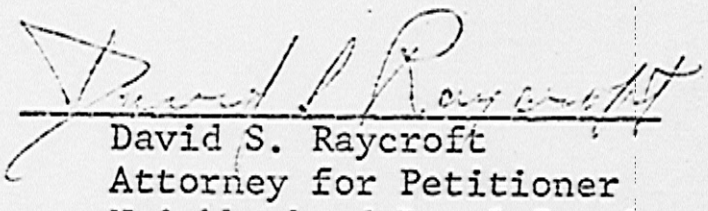
rial court in Harris, in effect placed such a construction atute. Slip opinion at p. 2.

classification further infringes on the fundamental constitutional
s of equal access to the courts, Truax v. Corrigan, 257 U.S. 312
); Griffin v. Illinois, 351 U.S. 12 (1956), and of the right to
and procreate children without unnecessary state interference.
g v. Virginia, 388 U.S. 1 (1957); Griswold v. Connecticut, 381
479, (1965); Skinner v. Oklahoma 316, U.S. 535 (1942). Because
aw provides that all persons must obtain divorces before entering
a new marriage relation, the state may not erect economic barriers
deprive one class, the indigent, of this necessary judicial relief.

CONCLUSION

For the foregoing reasons, the petition for allowance of appeal
d be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Support
e Petition for Allowance of Appeal was mailed, postage prepaid,
rman E. Parks, 612 Keefer Heights, Northwest, Apartment #3,
ngton, D. C., on this 24th day of February, 1969.

David S. Raycroft

David S. Raycroft
Attorney for Petitioner
Neighborhood Legal Services
1200 You Street, Southeast
Washington, D. C.

BRIEF OF AMICUS CURIAE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

YVONNE H. PARKS, Appellant

v.

NORMAN E. PARKS, Appellee

No. 22705

APPEAL FROM A JUDGMENT OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS

WALTER W. JOHNSON, JR.
Amicus Curiae Appointed
By This Court
2000 L Street, N.W.
Washington, D.C. 20036

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COUNTER-STATEMENT OF THE CASE

Yvonne H. Parks, a resident of the District of Columbia, lodged with the Clerk of the District of Columbia Court of General Sessions on November 7, 1968, a complaint for absolute divorce. The complaint alleged that because of marital difficulties she and her husband, Norman E. Parks, voluntarily agreed to separate and did so in or about the month of July, 1961. She further alleged that they had been married on February 11, 1961, and that no children had been born of the marriage. She prayed for a divorce on the ground of one year voluntary separation. No request was made for support for Mrs. Parks, and there was no allegation that Mr. Parks had any obligation to support and maintain any of the five children born to Mrs. Parks. These children, according to appellant's brief, 1/ ranged in age from three to twelve years of age.

Along with her complaint, appellant submitted a Motion To Proceed without prepayment of costs which stated she was without means to afford the costs of the suit and that she had good and substantial grounds for the relief she requested.

1/ See Appellant's Brief, P.2, footnote 1.

An affidavit in support of the Motion was filed which stated that Mrs. Parks was unable to afford the costs of bringing the action; that she is the mother of five (5) children whom she supports on $220.00 per month received from the Department of Public Welfare; and that she had no other source of income. She listed in the affidavit certain fixed expenses, e.g., rent, $74.00 per month, food, $80.00 per month, etc. Although her itemized expenses did not total $220.00, appellant accounted for the difference ($48.25) as being used for "miscellaneous" expenses such as clothing and "entertainment". Judge Joyce H. Green denied the motion.

On December 5, 1968, an appeal was filed. A motion to proceed on appeal in forma pauperis, along with an affidavit of poverty, was filed with the District of Columbia Court of Appeals. On December 31, 1968, the District of Columbia Court of Appeals denied the petition. The order entered by the Court of Appeals stated:

> "...The action of the trial court was a matter within its discretion..."

Appellant then filed a motion for hearing en banc. This motion was denied on January 24, 1969. Appellant then petitioned this Court for leave to file a petition for allowance of an appeal in forma pauperis. The petition was granted. The petition for allowance

of an appeal was likewise granted. This case has been set for argument on the same day and before the same division of the Court as Harris v. Harris, C.A. D.C. No. 22,266.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. In applying the In Forma Pauperis statute to indigent plaintiffs in divorce actions is it proper for the trial judge to give consideration to the public policy of the District of Columbia against divorce and in favor of the continuation of marriage?

2. Should the doctrine laid down in Griffin v. Illinois, 351 U.S. 12 (1956), be extended so as to apply to all civil litigation, including divorce actions?

3. Is the judicial branch of the Government the proper branch to establish a public fund from which disbursements can be made to pay for the costs, fees and other necessary charges involved in divorce actions?

4. Does the judicial branch of the Government have the power to modify or change legislative enactments pertaining to divorce actions?

ARGUMENT

It is apparent that the issues in this case are substantially the same as those in the case of Harris v. Harris, C.A.D.C. No. 22,266. As the order of this Court has directed that this case and the Harris case be scheduled for argument on the same day before the same division of the Court, it would be purely repetitous to relate here the same argument that is set forth in Harris. In an effort to save the Court's time as well as the time of respective counsel, it is requested that the argument in Harris be incorporated as though fully set forth herein.

It will be necessary to very briefly comment on this case and the Harris case although for the purpose of deciding these cases it is questionable whether the difference is substantial. There is very little argued in this case that was not argued in more detail in Harris. The financial position of Mrs. Parks and Mrs. Harris are similar although Mrs. Harris had a higher income. Judge Ryan was not convinced that Mrs. Harris was in fact indigent. Judge Green made no comment concerning the indigency of Mrs. Parks to appeal in forma pauperis. It is very possible she was not impressed with the statement of indigency when she reviewed the affidavit and became aware that a full financial

disclosure was not made to the Court. In addition, an allotment for "recreation" and "miscellaneous" likewise could not be expected to impress a trial judge when a plea of indigency is being invoked.

Assuming, arguendo, that both Mrs. Parks and Mrs. Harris were indigents, within the true meaning of the word, does not mean that they were automatically entitled to proceed in a divorce action in forma pauperis. It is significant that neither of these women demonstrated in any way whatsoever that a useful social purpose would be served by the obtaining of a divorce. Appellant points out in her brief numerous situations that might justify the Court in allowing the litigant to proceed in forma pauperis.[2/] But the fact is that neither appellant attempted in any way to demonstrate to the Court that some useful social purpose could be served by a severence of the marital relationship. It was not incumbent upon either Judge Ryan or Judge Green to probe into the matter in an effort to elicit facts which might justify the motion to proceed in forma pauperis. It was the obligation of the appellant to convincingly demonstrate to the Court that a social

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2/ See Appellant's Brief, Pgs. 11 & 12.

reason existed for the termination of the marriage. The judges of the Domestic Relations Branch have allowed divorce actions to proceed without prepayment of costs.[3/] This clearly indicates that they have not taken the position that no petitions to proceed in forma pauperis in a divorce action will be granted under any set of circumstances. A review of the docket of the Domestic Relations Branch from July of 1968 through March of 1969, shows that the Legal Aid Society has filed a total of 99 maintenance and custody cases in forma pauperis while Neighborhood Legal Services has filed one. The total number of maintenance and custody cases filed during this period was 596. This indicates that Legal Aid has proceeded in forma pauperis with one of every six of these type cases filed with the Court. These statistics confirm the policy of the Legal Aid Society as set forth in the Harris Brief and lends some

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3/ From July, 1968, through March, 1969, seventy nine (79) in forma pauperis petitions were submitted to the court. Fifty-two were granted. Seven of those granted were absolute divorce cases submitted by Neighborhood Legal Services. Thirty-eight of the petitions granted were maintenance cases submitted by the Legal Aid Society. It is interesting to note that Neighborhood Legal Society is apparently only interested in handling divorce actions and not interested in handling actions involving support for a wife or minor children.

support to the statements in Judge Ryan's opinion in the Harris case concerning the proper function of counsel in matrimonial litigation.

The remaining contentions in appellant's brief concerning the provisions of the D.C. Code relating to proceedings in forma pauperis, the provision callingfor appointment of counsel in uncontested divorce cases, and the constitutional arguments, have all been answered in the Harris Brief and will not be restated here. Although in the appellant's brief in Harris several solutions were suggested for the problem of publication costs and payment of court-appointed counsel fee, no such solutions are presented in appellant's brief here. It is assumed that the same ones are intended. If so, the response to these solutions as set forth in Harris are equally applicable here.

CONCLUSION

For the foregoing reasons it is respectfully urged by amicus curiae appointed by this Court that the orders of the District of Columbia Court of Appeals entered on December 31, 1968 and January 24, 1969, denying appellant's motion to file an appeal from the trial court's denial of leave to file a complaint without prepayment of costs, be affirmed.

WALTER W. JOHNSON, JR.
Amicus Curiae Appointed
By this Court
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Certificate of Service

I hereby certify that a copy of the foregoing Brief of Amicus Curiae was served by first class mail, postage prepaid, on David S. Raycroft, Esquire, Neighborhood Legal Services Program, 1219 Good Hope Road, S.E., Washington, D.C. 20020 and to Patricia M. Wald, Neighborhood Legal Services Program, 416 Fifth Street, N.W., Washington, D.C., this _____ day of May, 1969.

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